

1 Omann report that we discussed earlier, correct? 17:31:12
 2 A. Okay. 17:31:16
 3 Q. Do you recognize that as being -- 17:31:16
 4 A. I don't recognize that necessarily their 17:31:18
 5 idea of coverage is as messed up as their design 17:31:22
 6 test, but I don't know what they base that 316 17:31:26
 7 square feet on. 17:31:32
 8 MR. KOPEL: I'll ask the Court Reporter to 17:32:28
 9 please mark this document as Exhibit No. 16. 17:32:30
 10 (WHEREUPON, a certain document was 17:32:30
 11 marked Whittford Deposition Exhibit
 12 No. 16, for identification, as of
 13 01/12/2018.)
 14 BY MR. KOPEL:
 15 Q. Do you have Exhibit No. 16? 17:32:52
 16 A. I do. 17:32:54
 17 Q. Do you see that it is a printout from 17:32:56
 18 the Amazon website? 17:32:58
 19 A. I do. 17:33:00
 20 Q. Okay. And do you see that it features a 17:33:02
 21 product titled, "Ultrasonic Car Deer Warning." 17:33:04
 22 Whistles?" 17:33:08
 23 A. I do. 17:33:08
 24 Q. And that's -- we discussed earlier that 17:33:10

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1 decision. 17:34:16
 2 BY MR. KOPEL: 17:34:16
 3 Q. Okay. But in this instance, it does not 17:34:16
 4 sway your decision, correct? 17:34:20
 5 A. No. 17:34:20
 6 Q. You can put that aside, please. 17:34:26
 7 A. The Pennsylvania State Police tested 17:34:46
 8 those devices on half their fleet for five years 17:34:48
 9 and came out with no difference. 17:34:50
 10 Q. I'm sorry, I didn't hear what you said. 17:34:54
 11 A. I said the Pennsylvania State Police 17:34:56
 12 tested those devices for five years on half of 17:34:58
 13 their fleet of squad cars, came out with no 17:35:00
 14 difference. 17:35:04
 15 Q. Can you please turn to your initial 17:35:08
 16 report that was Exhibit 1? There is a section 17:35:12
 17 on -- yeah, that's it, and there is a section on 17:35:18
 18 Debbie Feinstein. Do you recall what section I'm 17:35:42
 19 referring to? 17:35:44
 20 A. Not right offhand. It's been a long 17:35:46
 21 day. 17:35:48
 22 Q. That's fine. 17:35:48
 23 A. Yes, here I am. 17:36:06
 24 Q. Okay. In the middle of this paragraph, 17:36:08

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1 ultrasonic car deer warning whistles are 17:33:12
 2 ineffective, correct? 17:33:16
 3 A. Yes, we did. 17:33:18
 4 Q. Okay. Can you please turn to page 2? 17:33:18
 5 It appears that customer reviews give this product 17:33:22
 6 3.4 out of 5 stars, do you see that? 17:33:26
 7 A. Yes, I do. 17:33:30
 8 Q. Does that change your opinion on the 17:33:32
 9 efficacy of the product? 17:33:34
 10 A. Not in the least. 17:33:34
 11 Q. Why not? 17:33:36
 12 A. Because I know the scientific 17:33:38
 13 limitations of that product, the hearing range of 17:33:38
 14 deer, the speeds of cars. Everything about it says 17:33:42
 15 that the perception is that this product is a good 17:33:46
 16 way to make sure you kill a deer with your car by 17:33:50
 17 driving faster than your headlights can cover. 17:33:54
 18 Q. So would you agree that reliance on 17:33:56
 19 Amazon reviews would not be a scientifically valid 17:34:00
 20 way to determine the efficacy of a product? 17:34:04
 21 MR. OSTOJIC: Object to form. 17:34:06
 22 BY THE WITNESS: 17:34:08
 23 A. Since this is the first Amazon review 17:34:08
 24 I've ever seen, I have hardly a basis to make that 17:34:12

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1 it states the 2011 and 2014 rat and mice test did 17:36:12
 2 indicate efficacy for the UPRs and small scale 17:36:16
 3 limited spaces test protocols used, do you see 17:36:20
 4 that? 17:36:24
 5 A. Absolutely. 17:36:24
 6 Q. Okay. If you did not have the benefit 17:36:24
 7 of your Transonic Pro study, would you be able to 17:36:28
 8 conclude solely on the basis of these 2011 and 2014 17:36:36
 9 tests that the Bell & Howell repellents are 17:36:42
 10 efficacious outside of the small scale limited 17:36:48
 11 spaces that these test protocols used? 17:36:50
 12 MR. OSTOJIC: Object, incomplete hypothetical, 17:36:52
 13 but go ahead. 17:36:54
 14 BY THE WITNESS: 17:36:56
 15 A. All I could conclude is that they were 17:36:56
 16 highly efficacious in this small scale study. 17:37:00
 17 BY MR. KOPEL: 17:37:04
 18 Q. But not outside of that, correct? 17:37:04
 19 A. That would call for speculation, but I 17:37:06
 20 would expect it would go beyond that distance 17:37:10
 21 because I know the limits of the sound transfer. 17:37:14
 22 Q. But that's based on your Transonic Pro 17:37:16
 23 study, correct? 17:37:20
 24 A. The fact that the decibel levels of 17:37:20

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1 these and the frequencies are the same, I would 17:37:24
 2 fully expect that they have the reach of at least 17:37:24
 3 15 to 20 feet should be efficacious to that 17:37:28
 4 distance. 17:37:34
 5 Q. At the end of this paragraph, you state, 17:37:34
 6 "As a biologist and scientist, I would have to say 17:37:38
 7 that all these tests failed at the design level due 17:37:40
 8 to lack of understanding biology and behavior of 17:37:44
 9 the test animals and maximum density tolerated by 17:37:48
 10 these species in a test setting." Do you see that? 17:37:50
 11 A. Yes. 17:37:52
 12 Q. What are you referring to when you say 17:37:52
 13 all these tests? 17:37:54
 14 A. Just the 2016 tests. 17:37:56
 15 Q. Okay. So why did you write all these 17:37:58
 16 tests? 17:38:00
 17 A. Because there were multiple tests in 17:38:00
 18 2016. 17:38:02
 19 Q. You mean the -- you're referring to the 17:38:04
 20 rats... 17:38:06
 21 A. The mice, the rats, the mixed animal 17:38:08
 22 tests. 17:38:10
 23 Q. Okay. Thanks for clearing that up. Was 17:38:10
 24 it appropriate for Dr. Potter to use cardboard 17:38:40

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1 BY THE WITNESS: 17:40:08
 2 A. If what he was testing was the efficacy 17:40:08
 3 of the units, then having put up a barrier which 17:40:12
 4 was known to reduce the efficacy, the harborage 17:40:16
 5 boxes and the plastic units inside of it, seems to 17:40:20
 6 be contrary to finding out whether the units are 17:40:22
 7 efficacious. 17:40:22
 8 BY MR. KOPPL: 17:40:28
 9 Q. Well, what if you're trying to find out 17:40:28
 10 the units are efficacious in somebody's house where 17:40:30
 11 there are areas for mice to harbor in that the 17:40:32
 12 ultrasonic waves cannot reach? 17:40:40
 13 A. It's already been clearly stated that 17:40:40
 14 the ultrasound cannot penetrate walls and floors. 17:40:42
 15 Q. So if someone wanted to test whether or 17:40:50
 16 not these repellers would be effective at driving 17:41:06
 17 our mice inside of a house setting, wouldn't you 17:41:08
 18 agree that it would be proper to use harborage 17:41:12
 19 areas where -- to use harborage areas just as the 17:41:16
 20 mice would have in a real world setting? 17:41:22
 21 MR. OSTOJIC: Object, incomplete hypothetical 17:41:24
 22 and form, but go ahead. 17:41:26
 23 BY THE WITNESS: 17:41:40
 24 A. We're not really looking at a real world 17:41:40

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1 harborage boxes in the mouse testing? 17:38:48
 2 A. Absolutely not. 17:38:52
 3 Q. Why not? 17:38:54
 4 A. Because three-tenths of a centimeter of 17:38:56
 5 cardboard reduces the sound force by 60 percent in 17:39:00
 6 the studies that were reported by Gould in 1984. 17:39:04
 7 and the cardboard boxes he used were from U-Haul 17:39:08
 8 meant for heavy materials, so they were at least 17:39:12
 9 three times that thickness, and it provided 17:39:16
 10 complete shelter from the sounds in the room where 17:39:20
 11 the repellers were. 17:39:22
 12 Q. So the mice inside those boxes were not 17:39:22
 13 able to detect the sounds at all, correct? 17:39:26
 14 A. Probably not. 17:39:30
 15 Q. Would you agree that mice have harborage 17:39:30
 16 spaces inside real world people's houses where 17:39:40
 17 ultrasound cannot reach? 17:39:46
 18 A. Yes. 17:39:48
 19 Q. Okay. So in that respect, would you 17:39:48
 20 agree that the use of harborage spaces in 17:39:50
 21 Dr. Potter's study mirrored the ability of mice to 17:39:54
 22 go into harborage spaces in real world houses? 17:39:58
 23 MR. OSTOJIC: Object, incomplete hypothetical, 17:40:02
 24 form, foundation, but go ahead. 17:40:04

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1 test here. 17:41:44
 2 BY MR. KOPPL: 17:41:46
 3 Q. I understand that's your opinion, but 17:41:46
 4 can you please focus on this question, and you can 17:41:48
 5 elaborate later, but did you understand the 17:41:52
 6 question clearly? 17:41:56
 7 A. I believe I did. You want to know 17:42:00
 8 whether it would be appropriate to have these there 17:42:02
 9 if you're trying to find out whether you can drive 17:42:04
 10 things out of the house. I'd still say you're 17:42:06
 11 creating a means to force habituation on the 17:42:18
 12 animals, but I would say no still. I just don't 17:42:22
 13 see that. 17:42:28
 14 Q. If mice have areas for harborage inside 17:42:34
 15 of houses, why would it be inappropriate to give 17:42:38
 16 them harborage areas inside of a test designed to 17:42:40
 17 see whether or not the repellers would work inside 17:42:44
 18 of the house? 17:42:46
 19 MR. OSTOJIC: Object, form, foundation, 17:42:46
 20 incomplete hypothetical, but go ahead. 17:42:48
 21 BY THE WITNESS: 17:42:52
 22 A. They can't hear the repellers inside 17:42:52
 23 that. 17:42:54
 24 BY MR. KOPPL: 17:42:56

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1 Q. And they can't hear it inside a crack in 17:42:56
 2 the floor in the house, correct? 17:42:58
 3 MR. OSTOJIC: Object. 17:43:00
 4 BY THE WITNESS: 17:43:02
 5 A. If they're under the floor, 17:43:02
 6 MR. OSTOJIC: Incomplete. 17:43:02
 7 BY MR. KOPEL: 17:43:02
 8 Q. Okay. So wouldn't you say that that's a 17:43:04
 9 parallel between this test and a real world house? 17:43:06
 10 A. It wouldn't come down to it. The whole 17:43:10
 11 test was so badly flawed it doesn't matter. 17:43:12
 12 Q. Can you please answer the question I 17:43:16
 13 asked? 17:43:18
 14 MR. OSTOJIC: Can you repeat the question? 17:43:18
 15 (WHEREUPON, the record was read 17:43:18
 16 as requested.) 17:43:20
 17 MR. OSTOJIC: Object to the form, incomplete 17:43:32
 18 hypothetical. 17:43:34
 19 BY THE WITNESS: 17:43:40
 20 A. Real world houses can have a place where 17:43:40
 21 mice can get out where they got in. I can't say 17:43:44
 22 that this is a good real world test with these 17:43:46
 23 things. 17:43:50
 24 BY MR. KOPEL: 17:43:56

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1 Q. You're not referring to the ability of mice 17:43:56
 2 to escape. I'm referring to the fact that houses 17:44:00
 3 contain areas for harborage as did Dr. Potter's 17:44:02
 4 test. Would you agree that houses contain areas 17:44:06
 5 for harborage just like Dr. Potter's test did? 17:44:10
 6 A. Well, not every house does, but, yes, 17:44:14
 7 some do. 17:44:16
 8 Q. Some houses don't have a space that's 17:44:26
 9 beneath the floor? 17:44:30
 10 A. Some houses have concrete floors. 17:44:32
 11 Q. Okay. And some houses don't have spaces 17:44:34
 12 inside the walls? 17:44:38
 13 A. Some houses are thoroughly insulated. 17:44:38
 14 Q. Okay. If a mouse escaped -- okay, let's 17:44:42
 15 take a step back and set a foundation. Mr. Donatue 17:45:30
 16 conducted experiments with two sets of apartments; 17:45:34
 17 one set of apartment that contained repellers and 17:45:40
 18 one set of apartments that did not contain 17:45:42
 19 repellers, correct? 17:45:46
 20 A. Yeah, one triplet of apartments with, 17:45:46
 21 one triplet of apartments without. 17:45:50
 22 Q. Okay. If a mouse escaped from an 17:45:52
 23 apartment without -- if a mouse died in an 17:46:00
 24 apartment without, you wouldn't expect that death 17:46:04

1 to have been as a result of starvation, correct? 17:46:06
 2 MR. OSTOJIC: Object. incomplete hypothetical. 17:46:12
 3 BY THE WITNESS: 17:46:16
 4 A. I wouldn't think it would be due to 17:46:16
 5 starvation. 17:46:18
 6 BY MR. KOPEL: 17:46:20
 7 Q. Okay. Is it normal in this sort of 17:46:20
 8 testing that you might find mice die during the 17:46:24
 9 course of the experiment? 17:46:28
 10 A. Some deaths but not the numbers that we 17:46:32
 11 saw and the distribution of where they were. Seven 17:46:36
 12 of nine were in test apartments, the back rooms of 17:46:40
 13 test apartments, only two in the front rooms. 17:46:44
 14 Q. What would be an acceptable number of 17:46:46
 15 deaths in an experiment such as this? 17:46:58
 16 MR. OSTOJIC: Object to form, foundation. 17:47:00
 17 incomplete hypothetical. 17:47:02
 18 BY THE WITNESS: 17:47:04
 19 A. Preferably none. 17:47:04
 20 BY MR. KOPEL: 17:47:04
 21 Q. Okay. But what number of deaths would 17:47:04
 22 you typically -- let me take a step back. It 17:47:08
 23 wouldn't be all that unusual to observe deaths 17:47:16
 24 under these circumstances, would it? 17:47:18

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1 MR. OSTOJIC: Same objections. 17:47:20
 2 BY THE WITNESS: 17:47:20
 3 A. It would be less expected if you put 17:47:20
 4 food in both the front and back rooms. 17:47:24
 5 BY MR. KOPEL: 17:47:26
 6 Q. Let's talk about the apartments without 17:47:26
 7 the repellers for a moment, okay? Even in an 17:47:30
 8 experiment such as this, it wouldn't be all that 17:47:32
 9 unusual to observe some deaths, correct? 17:47:34
 10 A. Or the escape of 15 mice which they had. 17:47:36
 11 Q. And that's not unusual, right, because 17:47:40
 12 mice can find a way to escape often despite best 17:47:42
 13 efforts; would you agree with that? 17:47:44
 14 A. Yes. 17:47:46
 15 Q. And if a mouse escaped in one of the 17:47:52
 16 apartments without a repeller, obviously that has 17:47:56
 17 nothing to do with the effects of the repeller, 17:48:00
 18 correct? 17:48:02
 19 MR. OSTOJIC: Object. 17:48:02
 20 BY THE WITNESS: 17:48:04
 21 A. Pretty clearly, yes. 17:48:04
 22 BY MR. KOPEL: 17:48:04
 23 Q. Sorry, sometimes I need to ask obvious 17:48:04
 24 questions for the record. And if a mouse -- if a 17:48:08

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1 mouse died in the front room of one of the 17:48:12
 2 experiments with a repeller, it is likely that that 17:48:16
 3 mouse did not die from starvation given that there 17:48:24
 4 was food there; would you agree with that? 17:48:26
 5 MR. OSTROM: Incomplete hypothetical, but go 17:48:30
 6 ahead. 17:48:30

7 BY THE WITNESS: 17:48:32

8 A. Probably. 17:48:32

9 BY MR. KOPEL: 17:48:40

10 Q. Is it your contention that the mice 17:48:40
 11 could hear the ultrasonic sounds in the back room 17:48:44
 12 during these tests? 17:48:50

13 A. At a level which would not be enough to 17:48:52
 14 be sensory -- disrupt their sensory system, but 17:48:56
 15 it's doubtful that they didn't hear the low levels 17:49:00
 16 of the units. 17:49:04

17 Q. What is the basis for that opinion? 17:49:16

18 A. The fact that they would be audible to a 17:49:24
 19 mouse to at least 20, if not 25 feet, and with some 17:49:28
 20 reflection off of walls and so forth, it would be a 17:49:32
 21 low level, admittedly low decibel level in there, 17:49:36
 22 but they can hear even low levels. 17:49:40

23 Q. Now, the door was only open by a very 17:49:44
 24 small crack, correct? 17:49:46

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1 A. That's true. That helps. 17:49:48
 2 Q. You're saying that the ultrasonic sound 17:49:50
 3 which is very directional, correct, was able to 17:50:00
 4 bounce off, I guess -- 17:50:04

5 A. Hard surfaces and walls. More 17:50:08
 6 importantly, the ones in the back room have been 17:50:12
 7 exposed to know where the sound is, and so they 17:50:16
 8 don't necessarily go into the area of the expeller 17:50:20
 9 in the front room. They can tell that it's still 17:50:24
 10 on. 17:50:32

11 Q. I want to take things one step at a 17:50:38
 12 time, please. Now, when you talk about ultrasonic 17:50:40
 13 sound bouncing off of walls -- 17:51:06

14 A. It reflects off hard surfaces, same way 17:51:14
 15 that echos come back from the rock faced ledges 17:51:18
 16 miles away on the lower frequency sounds. But it 17:51:22
 17 doesn't mean that it extends further when it does 17:51:28
 18 that. It just gets in places which are not 17:51:32
 19 directly in line with it. 17:51:34

20 Q. What testing have you seen on this 17:51:36
 21 point? 17:51:40

22 A. The most obvious to me is the fact that 17:51:44
 23 the sound units in the back hall in my farm house 17:51:48
 24 are just keeping mice away that are out of line 17:51:50

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1 room, correct? 17:54:52	1 A. Yes. 17:57:36
2 A. For that one count period, yes. 17:54:54	2 Q. Okay, I see what you're referring to 17:57:36
3 Q. And then the next day -- for the 17:54:56	3 here, okay. But that fluctuated back and forth. 17:57:40
4 remainder of this study, you're seeing what is 17:55:02	4 right? 17:57:42
5 roughly -- I know the numbers fluctuate -- but what 17:55:06	5 A. It did. 17:57:42
6 is roughly a 50/50 distribution, correct? 17:55:08	6 Q. And in the untreated group, the food was 17:57:42
7 A. Which is what you're expecting in an 17:55:12	7 only located in the front room; there was no food. 17:57:58
8 untreated group. 17:55:14	8 located in the back room, correct? 17:58:02
9 Q. Despite the fact that they had spent the 17:55:14	9 A. That's true for both groups. 17:58:02
10 entire pretest phase in the front room, correct? 17:55:16	10 Q. Right. Focusing on the untreated group, 17:58:04
11 A. If you notice as you go further down, 17:55:20	11 it did not appear that this caused the mice to 17:58:06
12 the numbers in the back room diminish somewhat, but 17:55:26	12 favor the front room in the untreated group, 17:58:10
13 yeah. 17:55:28	13 correct? 17:58:14
14 Q. So does it look -- based on these 17:55:30	14 A. Again, once we get to the end of it, the 17:58:18
15 numbers, does it look to you like the mice in the 17:55:34	15 numbers stack up a little bit on that side, but no. 17:58:22
16 untreated group were favoring the front room as a 17:55:38	16 Q. Now, if you were looking inside of an 17:59:04
17 result of being there during the pretest phase? 17:55:42	17 apartment trying to locate 12 mice, would you agree 17:59:08
18 A. They were equally comfortable there. As 17:55:52	18 that -- without disturbing the mice, without being 17:59:16
19 with the back room, it's pretty much a 50/50 all 17:55:54	19 too invasive, would you agree that it might 17:59:22
20 the way down and across. 17:55:58	20 sometimes be difficult to account for all of them? 17:59:24
21 Q. Despite the fact that they had spent the 17:56:00	21 A. Let me put it this way: Those 17:59:26
22 pretest phase in the front room, correct? 17:56:02	22 apartments were devoid of furniture, had carpeted 17:59:28
23 A. Only if you count that the counts are 17:56:04	23 floors, had barriers built up of masonry board all 17:59:32
24 valid all the way through. There is some evidence, 17:56:08	24 around the outside to limit their movement, to 17:59:36

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1 when you get to looking at the data cards, that 17:56:10	1 force them to stay within those areas. There was 17:59:40
2 there were large numbers of mice not being counted 17:56:16	2 nothing for them to hide under other than the 17:59:42
3 throughout this. 17:56:18	3 harborage, and part of the test count was to lift 17:59:46
4 Q. Okay. So I'm happy to talk with you 17:56:20	4 up the harborage, open up -- lift up the cardboard 17:59:48
5 about that. Let's just first finish this one 17:56:24	5 box, open the top of it, and count the mice inside 17:59:52
6 point. Based on the untreated group, it appears 17:56:26	6 the box. 17:59:56
7 that the pretest phase did not cause these mice to 17:56:28	7 Q. Are you sure about that? 17:59:56
8 favor the front room, correct? 17:56:22	8 A. Yes, because they give counts of the 17:59:56
9 A. Not strongly except there are a couple 17:56:40	9 number of mice inside the box. 17:59:58
10 of dates where there is 83, 60, 58 percent, but, 17:56:44	10 Q. I think there was comment, weren't 18:00:00
11 no, nothing strongly suggestive of that. 17:56:50	11 there? I don't think -- do you have a source for 18:00:04
12 Q. I'm sorry, where do you see 83 percent? 17:56:54	12 your -- 18:00:06
13 A. Percent difference. 17:57:04	13 A. Here's the tests, the data sheets. 18:00:06
14 Q. Oh, you mean 8.3 percent difference? 17:57:06	14 Q. Do you have a source for your statement 18:00:08
15 A. 83.3. 17:57:10	15 that they lifted the boxes at any point? 18:00:10
16 Q. What day was that? 17:57:12	16 A. I watched the video. 18:00:12
17 A. Day 19, October 17th. 17:57:14	17 Q. You saw them lifting the boxes? 18:00:14
18 Q. Are we on the same chart? October 17. 17:57:18	18 A. I saw them lift the box off, take the 18:00:16
19 was day 6, right? 17:57:22	19 plastic cover off the harborage. That's the only 18:00:18
20 A. Oh, wait, I'm looking at the back side. 17:57:24	20 way they could count the mice that were in there. 18:00:22
21 of the number. 17:57:26	21 Now the question is since you have two 18:00:24
22 19 October, 17, that's where I picked up 17:57:28	22 boxes and you checked both of those, where in that 18:00:24
23 the 17. 17:57:32	23 apartment are the missing mice when you have 18:00:28
24 Q. Are you referring to day 8? 17:57:34	24 nothing but carpet and bare floors and barriers? 18:00:32

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1 It's not like this was my daughter's bedroom when 18:00:36
 2 she was 14 and you had clothes all over the place 18:00:38
 3 and blankets on the floor and debris. There is 18:00:42
 4 nothing to hide a mouse in, in theory, in these 18:00:46
 5 apartments. 18:00:48

6 So the fact that they claim that they 18:00:50
 7 weren't disturbing the mice, well, if you lift the 18:00:56
 8 harborage box and the box and harborage lid off 18:01:00
 9 every time, you've done all the disturbing of mice 18:01:04
 10 that you reasonably can, and any attempt to say 18:01:06
 11 that we couldn't find them because we didn't 18:01:08
 12 disturb them in this barren landscape is purely an 18:01:12
 13 attempt to cover the fact they don't know where the 18:01:16
 14 hell those mice are. The counts don't add up. 18:01:18

15 Q. Which video are you referring to? 18:01:42

16 A. The whole dang thing that I was given 18:01:46
 17 which shot 15 seconds every minute for the first 18:01:48
 18 few days, 15 seconds every three minutes for the 18:01:52
 19 second or third day - third or fourth days, 18:01:56
 20 15 seconds of video of the apartments. It was on a 18:02:00
 21 flash drive that I received of all the video that 18:02:02
 22 was taken. 18:02:06

23 They only videoed to the 16th day and 18:02:06
 24 then they went to still photographs. That all of it 18:02:10

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1 goes to obfuscate the fact that they aren't 18:02:12
 2 accounting for 50 -- or 45 percent of the total 18:02:16
 3 number of mice on most counts, especially towards 18:02:18
 4 the end of the tests. It's so badly conducted in 18:02:22
 5 terms of consistency of counts and acknowledging 18:02:28
 6 where mice are and aren't than the conclusions of 18:02:32
 7 the test are heavily flawed. 18:02:38

8 At the end of the test, they dismantle 18:02:40
 9 the apparatus, and they find in excess of 18 mice 18:02:44
 10 that were behind the barriers primarily in the 18:02:48
 11 rooms with the expellers, the back rooms of the 18:02:52
 12 treated apartments. They don't mention that. 18:02:56

13 Q. Hold on. They find 18 mice. 18:03:00

14 A. That are not in any of the rooms. 18:03:04

15 Q. That escaped? 18:03:06

16 A. That escaped. 18:03:08

17 Q. Okay. And are you counting - hold on. 18:03:08

18 So are you counting all the apartments right now? 18:03:12

19 A. Yes. 18:03:16

20 Q. Okay. So that's including the untreated 18:03:16
 21 apartments, right? 18:03:18

22 A. Yes. 18:03:20

23 Q. Have you compared the number that 18:03:22
 24 escaped in the untreated apartments versus the ones 18:03:22

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1 page you're looking at.	18:05:38	J CROSS EXAMINATION	18:13:18
2 A. It's not numbered.	18:05:38	2 BY MR. OSTOJIC:	18:13:18
3 Q. October what?	18:05:40	3 Q. Dr. Whitford, let me show you what was	18:13:26
4 A. October 25th.	18:05:40	4 previously marked as Whitford Deposition Exhibit	18:13:26
5 Q. 2017?	18:05:42	5 No. 14 and in particular the page number Feuerschein	18:13:30
6 A. 2017.	18:05:44	6 91 to see if it refreshes your recollection as to	18:13:34
7 Q. Are you looking at 4:15 p.m.?	18:05:44	7 whether tests done by Interlek in 2016 documented	18:13:38
8 A. Yes, I am.	18:05:46	8 any rats that were -- that died and that were	18:13:42
9 Q. Okay. What did you say?	18:05:48	9 replaced and in particular the bottom two rows?	18:13:46
10 A. You see the number of mice that they're	18:05:50	10 A. Yes, I missed them. I was looking for	18:13:56
11 finding?	18:05:54	11 something below that. Quantity of dead and add is	18:13:58
12 Q. Yes.	18:05:54	12 acknowledged so that the Lins at least are carrying	18:14:04
13 A. In the back room, very few. You look at	18:05:54	13 out the necessary divulging of information.	18:14:08
14 the total number of mice going down in the study	18:05:58	14 Q. So the 2016 tests did indicate where	18:14:12
15 and across, you have four and eight mice -- excuse	18:06:08	15 rats had died and were replaced, correct?	18:14:16
16 me, five and eight, so 13 total mice counted, and	18:06:18	16 A. Yes.	18:14:18
17 yet if you take those same three apartments, we	18:06:22	17 Q. And there was nothing in the 2011 and	18:14:18
18 show 30 mice.	18:06:28	18 2014 tests results that showed any mortality with	18:14:20
19 Q. Do you see that there are boxes listed	18:06:30	19 respect to the rats, true?	18:14:26
20 here, Box 1?	18:06:34	20 A. Correct.	18:14:26
21 A. Yes, those are --	18:06:36	21 Q. Sir, is it your opinion that the	18:14:26
22 Q. Do you understand that those are counts	18:06:38	22 Bell & Howell devices which are the subject matter	18:14:28
23 of how many were in the boxes?	18:06:38	23 of this lawsuit are effective in repelling and	18:14:32
24 A. Yes.	18:06:40	24 driving out rodents in the area covered by the	18:14:34

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1 Q. Okay. So you understand that there were	18:06:40	1 ultrasonic sounds of those devices, true?	18:14:38
2 spaces other than boxes in those apartments?	18:06:42	2 A. Absolutely.	18:14:38
3 A. There were places where the mice could	18:06:44	3 Q. Sir, is it your opinion that it was	18:14:40
4 hide which they weren't being found including those	18:06:46	4 reasonable for Bell & Howell to rely upon the tests	18:14:42
5 areas as it says here. These are the number of	18:06:50	5 done in 2011 and 2014 which you reviewed in this	18:14:44
6 mice on this chart that were found behind the	18:06:52	6 case to state that their devices are ultrasonic	18:14:48
7 barriers when it was taken down.	18:06:56	7 pest repellors?	18:14:52
8 MR. KOPPL: Okay. Let's take a break, please.	18:06:58	8 A. Yes.	18:14:52
9 THE VIDEOGRAPHER: We're off the record at	18:07:04	9 Q. Sir, is it your opinion that it was	18:14:54
10 6:00 o'clock p.m.	18:07:04	10 reasonable for Bell & Howell to rely upon the 2011,	18:14:54
11 (WHEREUPON, a short break was had.)	18:12:44	11 2014 tests which were conducted on the devices that	18:14:58
12 THE VIDEOGRAPHER: We're back on the record at	18:12:44	12 you reviewed to claim that the Bell & Howell	18:15:02
13 6:06 p.m.	18:12:54	13 devices will repel and drive rodents out of the	18:15:04
14 BY MR. KOPPL:	18:12:54	14 areas covered by those devices?	18:15:08
15 Q. The notes that you have brought today,	18:12:56	15 A. Yes.	18:15:10
16 when did you prepare those?	18:13:00	16 MR. OSTOJIC: Thank you, sir. I don't have any	18:15:10
17 A. Last night.	18:13:02	17 other questions.	18:15:12
18 Q. By yourself?	18:13:04	18 MR. KOPPL: I've got nothing. Thank you.	18:15:14
19 A. Yes.	18:13:04	19 THE VIDEOGRAPHER: We are off the record at	18:15:16
20 Q. Okay. I'm going to make a formal	18:13:06	20 6:08 p.m.	18:15:18
21 request for production of those notes.	18:13:08	21 MR. OSTOJIC: Well reserve. If it's ordered,	18:15:20
22 Dr. Whitford, thank you for your time.	18:13:10	22 you can just provide it to me.	18:15:40
23 That's all I've got subject to if something comes	18:13:12	23 FURTHER DEponent SAITH NOT.	
24 up on Redirect.	18:13:16	24	

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1 I, GAIL LIVIGNI, CSR No. 84-1965, a
 2 Notary Public within and for the County of Will,
 3 State of Illinois, and a Certified Shorthand
 Reporter of said state, do hereby certify:
 4 That previous to the commencement of the
 examination of the witness, the witness was duly
 5 sworn to testify the whole truth concerning the
 matters herein:
 6 That the foregoing deposition transcript,
 7 was reported stenographically by me, was thereafter
 8 reduced to typewriting under my personal direction
 9 and constitutes a true record of the testimony
 10 given and the proceedings had;
 11 That the said deposition was taken
 12 before me at the time and place specified;
 13 That I am not a relative or employee or
 14 attorney or counsel, nor a relative or employee of
 15 such attorney or counsel for any of the parties
 16 hereto, nor interested directly or indirectly in
 17 the outcome of this action.
 18 IN WITNESS WHEREOF, I do hereunto set my
 19 hand of office at Chicago, Illinois, this 17th day
 20 of January, 2018.

21
 22 *Gail Livigni*
 23 GAIL LIVIGNI, CSR No. 84-1965

1 DEPOSITION ERRATA SHEET
 2 DECLARATION UNDER PENALTY OF PERJURY
 3 I declare under penalty of perjury that I
 4 have read the entire transcript of my deposition
 5 taken in the above-captioned matter or the same has
 6 been read to me and the same is true and accurate,
 7 save and except for changes and/or corrections, if
 8 any, as indicated by me on the DEPOSITION ERRATA
 9 SHEET hereof, with the understanding that I offer
 10 these changes as if still under oath. Signed on
 11 the _____ day of _____, 20 _____.
 12
 13 _____
 14 PHILIP WHITFORD, Ph.D.
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.